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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) FSF-031441	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____ Signature _____ Typed or printed name _____		Application Number 10/644,789	Filed August 21, 2003
First Named Inventor Katsutoshi Yamane		Art Unit 1752	
Examiner Thorl Chea		Signature  Sheldon J. Moss Typed or printed name (703)838-8013 Telephone number October 25, 2005 Date	
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>52,053</u></p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p> <p><input type="checkbox"/> *Total of _____ forms are submitted.</p>			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.: 10/644,789
Applicant: Katsutoshi Yamane
Filed: August 21, 2003
Title: IMAGE FORMING METHOD USING PHOTOTHERMOGRAPHIC MATERIAL
Art Unit: 1752
Examiner: Thorl Chea
Docket No.: FSF-031441
Cust. No.: 37398

Confirmation No. 6929

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

1. Introduction

Applicant submits the following arguments in support of the Pre-appeal Brief Request for Review. Applicant submits that there is at least one legal deficiency and at least one factual deficiency in the rejections. The legal deficiency lies in the Examiner's failure to present a prima facie case of obviousness by failing to demonstrate that there is a suggestion or motivation to modify the reference(s) to arrive at applicant's invention. The factual deficiency is based on the Examiner's failure to cite any reference teaching two of the limitations of applicant's claimed invention.

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2. Legal Deficiency

Applicant asserts that the Examiner has failed to present a prima facie case of obviousness regarding the following two separate claim limitations that are found in independent claims 1 and 6 of the present application (hereinafter referred to as limitation A and limitation B, respectively):

A. developing the photothermographic material in a thermal developing device configured such that a distance between an exposing section and a developing section is not more than 50 cm

B. and the photothermographic material begins to be developed at an exposed portion thereof while another portion is still being exposed.

In a rejection under 35 U.S.C 103(a) in the Office action mailed July 26, 2005, the Examiner relies on U.S. Patent No. 6,288,370 to Ogawa for its supposed teaching of Applicant's limitations A and B, on page 3 of the Office action. However, the Examiner admits that neither Ogawa nor U.S. Patent No. 6,649,338 to Mitsuhashi, the references used in the rejection, teach those limitations. According to the Examiner, a person skilled in the art could read Ogawa (especially Figs 5, 11, and 20) and find it obvious to reconfigure the apparatus of Ogawa to arrive at an apparatus that includes applicant's limitations A and B. The crux of the Examiner's reasoning appears to lie in the following statement, also from page 3 of the July 26 Office action:

"the distances and time of performing imagewise exposure step and heat developing step would have been found prima facie obvious to the worker of ordinary skill in the art at the time the invention was made since it would have expected in the art the image can be produced by heating photothermographic material right after the image wise exposure, i.e. after the formation of latent image."

Applicant submits that Ogawa does not support the Examiner's reasoning. The

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focus of Ogawa is providing development heaters that provide uniform heating for a photothermographic sheet. While Ogawa does disclose an apparatus that includes an exposure unit and development heaters, the text of Ogawa is silent regarding the distance between same and the time it takes for an exposed sheet to travel from the exposure unit to the development heaters.

3. Factual Deficiency

Contrary to the assertions of the Examiner, Ogawa is silent concerning the interplay between exposing the photothermographic sheet and developing the photothermographic sheet. As noted above, the Examiner cites FIGS. 5, 11, and 20 of Ogawa to support the position that Ogawa teaches applicant's limitations A and B. However, from the depiction of the apparatus and the photothermographic sheet to be developed in FIG. 5 of Ogawa, it does not appear physically possible for the sheet to be exposed by unit 46 while simultaneously being developed by heaters 120. Thus, Ogawa fails to teach or suggest the simultaneous exposure and development of a photothermographic sheet as required by claims 1 and 6.

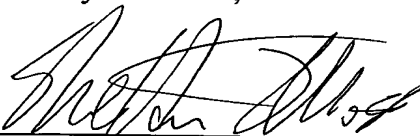
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4. Conclusion

It is respectfully submitted that the Examiner's rejection is legally deficient for failing to make a prima facie case of obviousness. It is further submitted that the references, either alone or in combination, fail to teach the distance limitation and simultaneous exposing and developing limitations of independent claims 1 and 6, resulting in a factual deficiency in the rejection. In view of the above, it is submitted that all of the claims currently pending in the application are in condition for allowance. Early and favorable action is respectfully requested.

Respectfully submitted,



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October 26, 2005